IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Crl.MC.No. 3416 of 2007(Y)

PETITIONER: ACCUSED

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1. M/S.ANJANEYA ENTERPRISES,
THIRUVANANTHAPURAM, REP. BY P.V.SURESHKUMAR,
S/O.PADMANABHA PILLAI, T.C.NO.24/1648,
'SUSHANTH', THYCADU, THIRUVANANTHAPURAM - 14.

2. P.V.SURESHKUMAR,
S/O.PADMANABHA PILLAI, MANAGING PARTNER
M/S.ANJANEYA ENTERPRISES, THIRUVANANTHAPURAM
T.C.NO.24/1648, 'SUSHANTH', THYCADU,
THIRUVANANTHAPURAM - 14.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SMT.TULASI PANICKER
SRI.C.N.SREEKUMAR

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SREE SAKTHI PAPER MILLS LTD.,
REGISTERED OFFICE 39/2724-A, SREE KAILAS,
PALIYAM ROAD, KOCHI - 16, REPRESENTED BY
MANAGING DIRECTOR & POWER OF ATTORNEY HOLDER
V.VINOD KUMAR.

BY P.P. SRI. GIKKU JACOB.
BY ADV. SRI.S.SREEKUMAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J

Crl.M.C. No. 3416 OF 2007

Dated this the 14th day of November, 2007

ORDER

The petitioners are accused 1 and 2 in a prosecution under Sec.138 of the Negotiable Instruments Act. The 1st petitioner/accused No.1 is a partnership firm and the 2nd petitioner/accused No.2 is its Managing Partner. The proceedings under Sec.138 of the Negotiable Instruments Act was initiated on the basis of a complaint filed by the complainant/2nd respondent herein.

2. The trial court found the petitioners guilty. The Sessions Court, in appeal, set aside the conviction. This Court in the appeal against acquittal restored the verdict of guilty, conviction and sentence passed by the trial court. The 1st petitioner has been sentenced to pay a fine of Rs.5,000/- and the 2nd petitioner has been sentenced to undergo simple

imprisonment for a period of six months. He has also been directed to pay an amount of Rs.5 lakhs as compensation. Default sentence has also been prescribed.

3. The petitioners have now come before this Court to apprise this Court of the subsequent settlement and composition of the offence. The 2nd respondent has entered appearance through counsel. He confirms that the disputes have been settled and that the 2nd respondent/complainant has compounded the offence alleged against the petitioners. The entire amount due to the 2nd respondent has already been received, it is submitted.

4. An application has been filed by the rival contestants duly countersigned by their respective counsel to confirm that there has been some settlement/composition.

5. The appellate judgment rendered by this Court restoring the verdict of guilty, conviction and sentence has now become final. The learned counsel, in these circumstances, prays that the dictum in **Sabu George v. Home Secretary (**2007 (1) KLT 982) may be invoked and the 2nd petitioner may be saved of the

trauma of incarceration in prison notwithstanding the composition.

6. Having considered all the relevant circumstances, I am satisfied that this is an eminently fit case where the dictum in **Sabu George v. Home Secretary (**2007 (1) KLT 982) can be invoked in favour of the 2nd petitioner to save him from the trauma of incarceration in prison notwithstanding the composition. I am further satisfied that the direction for payment of compensation need not be enforced, the 2nd respondent having admitted that the entire amount has been paid and received in full satisfaction of his claim. I am not satisfied that the sentence imposed against the 1st petitioner/ accused No.1 deserves to be interfered with notwithstanding the composition. I am satisfied that the sentence imposed against the 2nd petitioner/accused No.2 alone need be set aside invoking the powers under Sec.482 of the Cr.P.C. as explained in the dictum in **Sabu George v. Home Secretary (**2007 (1) KLT 982).

7. This Crl.M.C. is accordingly allowed in part. The

sentence imposed on the 2nd petitioner under Sec.138 of the Negotiable Instruments Act including the direction for payment of compensation and the default sentence is hereby quashed.

8. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge